

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TOMMY LEE YATES	§	
v.	§	CIVIL ACTION NO. 5:17cv93
C. McPEAK, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Tommy Lee Yates, a former inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil action under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court referred the lawsuit to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On February 18, 2020, mail sent to Plaintiff was returned with the notation “RTS released.” On February 24, the Clerk of Court received correspondence from another inmate asking that the case be held in abeyance because of Plaintiff’s serious illness.

On April 23, 2020, the Court contacted TDCJ-CID to inquire when Plaintiff had been released. TDCJ-CID personnel informed the Court that in fact, Plaintiff had passed away on February 1, 2020.

On April 24, the Magistrate Judge issued a Report recommending all pending motions in the case be denied. Because there was no suggestion of death in the record, the Magistrate Judge stated the Report would serve as the statutory statement noting Plaintiff’s death and commencing the 90-period for the filing of a motion for substitution by any party or by the decedent’s successor or representative, as set out in Fed. R. Civ. P. 25(a). To date, no motion for substitution has been filed.

Fed. R. Civ. P. 25(a) provides that if a motion for substitution is not made within 90 days after service of a statement noting the death, “the action by or against the decedent shall be dismissed.” *See also Broderick-Home v. United States*, 544 F.App’x 479, 2013 U.S. App. LEXIS 22188, 2013 WL 5832541 (5th Cir., October 31, 2013) (affirming Rule 25(a) dismissal without prejudice). It is accordingly


ORDERED that the Magistrate Judge’s Report (docket no. 51) is **ADOPTED** as the opinion of the district court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** based upon the death of the Plaintiff Tommy Lee Yates and the absence of a motion for substitution in accordance with Fed. R. Civ. P. 25(a). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered this

Jul 26, 2020



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE